IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3035 OF 1992

Shvi Shivaji Education Society
through its Secretary,
Taluka Karad, Dist. Satara. Petitioner

versus

1. Smt.Shahnaz Hassan Sanade,
R/o.17-C, Shukrawar Peth,
Karad, Dist. Satara.

2. The Administrative Officer,
Municipal School Board,
Karad, Dist. Satara.

3. The Presiding Officer,
School Tribunal, Pune Region. Respondents

Mr.R.R.Bhosale i/by Ms.Chhaya F. Deshmukh, Adv. for petitioner.

Mr.I.S.Rathore, Adv. for respondent no.1.

Mr.Shekhar A. Ingawale, Adv. for respondent no.2

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 28th November 2006

JUDGEMENT :

1. Heard. The petitioner challenges the judgement and order dated 23rd March 1992 passed by the School Tribunal, Pune in Appeal No.229 of 1990 on various grounds. It is, however, not

necessary to refer to all those grounds. Suffice it to refer to only one ground which would justify interference in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

2 The impugned order apparently discloses a specific plea having been raised by the petitioner in answer to the appeal filed by the respondent, that the respondent was over aged at the time of appointment in the school. Undoubtedly, there is a dispute as regards the initial date of the appointment as to whether it was 1st July 1984 or whether it was 7th November 1987. But it is not necessary to go into that controversy. Suffice it to note that it is the contention of the petitioner that the respondent was appointed on 23rd August 1984 and therefore even in the year 1984 she was over aged, as Rule 9(4)(a) of the Maharashtra Employees of Private Schools Rules, 1981 provides that appointment to be made in any post in the Primary School the candidate shall not be more than 28 years of age. If it is established that the respondent was born in the year 1954 obviously she would have been more than 28 years of age in the year 1984 and therefore, could not satisfy the criteria of Rule

9(4)(a) of the said Rules.

3. Learned advocate for the respondent on the other hand has submitted that the said Rule provides for relaxation of the age limit in case of women candidates and respondent being a woman, it was open for the management to obtain necessary relaxation in the upper age limit. Be that as it may, the fact remains that inspite of a specific plea having been raised before the School Tribunal regarding the over age of the respondent at the time of her appointment, the impugned judgement nowhere discloses consideration of the said point while deciding the appeal filed by the respondent against the order of termination of services.

4. The point which goes to the root of the matter, if raised by the party and the Tribunal fails to consider the same while deciding the matter, it would obviously amount to failure of exercise of jurisdiction on the part of the Tribunal and considering the same and as the point regarding the age factor goes to the root of the matter in the sense it would decide as to whether the appointment of the respondent was valid or not, it was absolutely necessary for the

Tribunal to consider the said issue and deal with the same on the basis of the materials placed by the parties and to decide the same. Failure in that regard by the Tribunal obviously has resulted in failure to exercise his jurisdiction in the manner it is to be exercised and in this view of the matter, the impugned order cannot be sustained. Hence, while setting aside the impugned order, the matter is remanded to the School Tribunal to decide the appeal in accordance with the provisions of law after hearing the parties as expeditiously as possible and in any event on or before 30th June 2007. It is made clear that this Court has not expressed any opinion on any of the issues involved in the matter and all the issues are kept open for decision by the Tribunal in accordance with the provisions of law. Rule is made absolute in the above terms. No order as to costs.

(R.M.S.KHANDEPARKAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.3035 OF 1992

DATE OF DECISION : 28th November 2006

FOR APPROVAL AND SIGNATURE OF :

THE HON'BLE SHRI JUSTICE R.M.S.KHANDEPARKAR :-

1. Whether Reporters of Local papers may be allowed to see the judgement:

2. To be referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair copy of judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad and Goa Offices ?